

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV 2015-404-2524
[2020] NZHC 2210**

BETWEEN JOHN CHARLES STRINGER
 Plaintiff

AND COLIN GRAEME CRAIG
 First Defendant

 HELEN RUTH CRAIG
 Second Defendant

 ANGELA MARIA STORR
 Third Defendant

 KEVIN ERIC STITT
 Fifth Defendant

 STEPHEN DYLAN TAYLOR
 Sixth Defendant

Hearing: On the papers

Appearances: J C Stringer in person
 C G Craig, H R Craig, A M Storr, K E Stitt, S D Taylor in person
 W Akel, Counsel assisting the Court

Date of judgment: 27 August 2020

**JUDGMENT NO 5 OF PALMER J
(Stay)**

This judgment was delivered by me on 27 August 2020 at 4.00pm. Pursuant to Rule 11.5 of the High Court Rules.

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Registrar/Deputy Registrar

Parties and counsel assisting:

J C Stringer	C G Craig
	H R Craig
W Akel, Barrister	A M Storr
	K E Stitt
	S D Taylor

What happened?

[1] On 3 April 2020, I issued judgment in these proceedings, in favour of the defendants.¹ On 18 May 2020, I awarded costs to the defendants.² On 18 June 2020, I made further directions as to costs.³ Costs were fixed at \$77,238.43. Mr Stringer applied to the Court of Appeal for leave to appeal out of time, which was granted on 16 July 2020.⁴

[2] On 21 July 2020, a charging order was registered against a leasehold property owned by Mr Stringer and his wife in respect of payment of the costs award to the defendants. On 4 August 2020, Mr Stringer says Mr Taylor sought payment of the costs award or he would apply to sell the property.

[3] On 4 August 2020, I issued Minute No 18 observing that an appeal of a judgment and costs award does not operate as a stay of the costs award or its execution.⁵ I directed that, if Mr Stringer did not pay the costs, or apply to the High Court or Court of Appeal for a stay of enforcement of the costs award, within five working days of the date of the minute, the security of \$5,000 held by the Auckland High Court would be released to the defendants.

Application and submissions

[4] On 10 August 2020, Mr Stringer applied to the Court to:

- (a) rescind the charging order;
- (b) stay enforcement of the costs award until his appeal is heard;
- (c) continue to hold his security of \$5,000 until the appeal is heard;
- (d) order Mr Craig to pay costs for discovery that he says the Court ordered in 2016; and

¹ *Stringer v Craig (No 3)* [2020] NZHC 644.

² *Stringer v Craig (No 4)* [2010] NZHC 1021.

³ Minute No 17, 18 June 2020.

⁴ *Stringer v Craig* [2020] NZCA 294.

⁵ Court of Appeal (Civil) Rules 2005, r 12(1).

- (e) apparently, also, stay a bankruptcy notice against him, which had not then been served.

[5] Mr Stringer submits that if no stay is granted, his bona fide appeal (which includes the costs judgment) will be rendered nugatory because his family home will have been disposed of with serious effect on his wife, an innocent third party. In any event, he submits his reputation will be affected. He submits the defendants are not injured by a stay so the balance of convenience is not in favour of a sale of their home. He submits he would be severely disadvantaged in pursuing the appeal if he were bankrupt. He submits the appeal has merit because the Court of Appeal granted leave. He submits there have been three court orders that Mr Craig pay a specific cost of \$5,000 plus interest as a condition of the receipt of discovery.

[6] The defendants oppose the application. They submit:

- (a) Because Mr Stringer has not appealed the findings in the judgment that the defence of truth succeeded, at most he could succeed only regarding one defamatory meaning in one cause of action against two defendants. The appeal is destined to fail. The costs judgment has not been appealed.
- (b) They have borne considerable financial burdens and will be adversely impacted by a stay. If the costs award is overturned, they would be able to return the costs and, at the very least, the \$5,000 of security should be released.
- (c) The charging order only prevents Mr Stringer transferring the property to avoid the costs award and there are no grounds to displace it.
- (d) The costs award against Mr Craig, referred to by Mr Stringer, was in a different proceeding which is now awaiting trial, should be addressed at the conclusion of the proceeding, previous costs awards in that

proceeding were rescinded,⁶ and it was dealt with in a previous memorandum of 29 July 2019.

- (e) Mr Stringer can seek to set aside the bankruptcy notice once he is served with it.

[7] In a further supporting affidavit of 25 August 2020, Mr Stringer’s evidence is that he was served with a bankruptcy notice on 24 August 2020. He says Mr Craig instructed he be served despite Mr Craig knowing he had applied for a stay.

Stay of enforcement of costs award

[8] Under r 20.10(2)(b) of the High Court Rules 2016, the Court may order a stay of enforcement of any judgment or order appealed against. The Court determines an application for a stay on the balance of convenience between the parties, in a manner which meets the overall justice of the case.⁷ The Court takes into account, relevantly, whether the absence of a stay would render the appeal nugatory, the bona fides of the appellant, whether the successful party will be injuriously affected, the overall balance of convenience and the apparent strength of the appeal. In *Walker v Castlereagh Properties Ltd*, Associate Judge Osborne held that the justice of a case where the unsuccessful party appeals and bears costs in the interim will “most often (albeit not invariably) favour the successful respondent”.⁸

[9] Here, from what I can tell, the merits of the appeal are weak. Perhaps, as the judge appealed from, I would think that. The Court of Appeal thought the same but considered they were not in a position to say “with the necessary degree of certainty that it is in the ‘hopeless’ category so as to warrant declining an extension of time”.⁹ Similarly, I do not discount the possibility that Mr Stringer may enjoy more success on appeal than at trial. If he does, even though he appears not to have appealed the defence of truth, that may affect the award of costs.

⁶ *Craig v Stringer* [2017] NZHC 50 at [4].

⁷ *Philip Morris v Liggett & Myers* [1977] 2 NZLR 41 (CA) at 43 (per Cooke J).

⁸ *Walker v Castlereagh Properties Ltd* [2015] NZHC 907, [2015] NZAR 944 at [44].

⁹ *Stringer v Craig*, above n 4, at [5].

[10] If the stay is granted, the defendants will have to wait until determination of the appeal to enforce the costs award, if they are still entitled to it. If the stay is declined, Mr Stringer may be bankrupted. In that case he may have to convince the Official Assignee to consent to pursuit of the appeal, he would suffer the indignities and other disadvantages of bankruptcy and Mrs Stringer may be negatively affected if there is an effect on their house. The balance of convenience favours Mr Stringer. I stay any steps to enforce the award of costs including through the bankruptcy process and through taking further steps in relation to the charging order.

[11] I have not had submissions on the effect of the stay on the bankruptcy notice. However, with the stay of the costs award, Mr Stringer is not currently liable for the costs to the defendants. Accordingly, under s 17(1)(b) of the Insolvency Act 2006, execution of the order has been halted and Mr Stringer has not currently committed an act of bankruptcy as defined, and, under s 16, cannot be adjudicated bankrupt. If that is not effective, I treat Mr Stringer's application for interim orders as an application to set aside the bankruptcy notice and adjourn it pending determination of his appeal.¹⁰

[12] I do not rescind the charging order. The order itself does not affect Mr Stringer's use of the property. Further steps that would affect it are prevented by the stay order made above.

Security for costs

[13] I do order that the security for costs be released to the defendants by the High Court Registry, on the basis that the defendants have undertaken to repay it if they are not successful on appeal. Enforcing this small part of the costs award does not have the negative consequences for Mr Stringer that the rest of it does.

Another order

[14] The order that Mr Craig pay the costs of attendances of a computer expert for the purposes of discovery was made in a different proceeding from this one. But aspects of that proceeding were dealt with in the judgment under appeal and for, a

¹⁰ *Wise v Benecke* HC Auckland, B No 227-228/95, 21 June 1995; *Weston v Ayers* [2017] NZHC 3000.

reasonable time, the proceedings were case managed together. Mr Craig was ordered to pay those costs by Associate Judge Matthew in August 2016 “immediately upon receipt of invoice” and by me, again, in July 2019.¹¹

[15] Because those orders have been made, they do not need to be made again. I cannot locate a memorandum from Mr Craig of 29 July 2019 dealing with the matter. On the face of it, the computer expert can rely on the Court’s orders in seeking to enforce payment if he wishes to do so. But, in any event, the payment is not due to Mr Stringer so he cannot do so.

Palmer J

¹¹ Minute No 12, 19 July 2019, at [11]-[12].